

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GREAT AMERICAN INSURANCE) Case No. 12-00833-SC
COMPANY, and GREAT AMERICAN)
INSURANCE COMPANY OF NEW YORK,) ORDER DENYING MOTION FOR
Plaintiffs,) RECONSIDERATION
v.)
MICHAEL CHANG, d/b/a SUNRISE)
CLEANERS, INC., and ROXANNE)
CHANG, d/b/a SUNRISE CLEANERS,)
INC.,)
Defendants.)

I. INTRODUCTION

On June 19, 2013, the Court granted Great American Insurance Company and Great American Insurance Company of New York's (collectively, "Great American") motion for partial summary judgment. ECF No. 77 ("SJ Order"). Defendants Michael Chang and Roxanne Chang now move for reconsideration of the Summary Judgment Order. ECF No. 78 ("Mot."). Great American has opposed the Motion, but the Changs declined to file a reply. ECF No. 79 ("Opp'n"). For the reasons set forth below, the Motion is DENIED.

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1 **II. BACKGROUND**

2 The Court assumes familiarity with the facts and legal
3 opinions recited in the Summary Judgment Order. In short, this
4 case involves an insurance coverage dispute arising from underlying
5 state court actions and government orders concerning the alleged
6 contamination of a property owned by Michael Chang (the
7 "Property"). Michael Chang and his wife, Defendant Roxanne Chang
8 (collectively, the "Changs"), operated a dry cleaning business on
9 the property from 1977 to 1981. The Changs purchased third-party
10 liability insurance for the premises from Great American for the
11 period of 1977 to 1983.

12 About a decade later, the Changs leased the Property to Bilal
13 Kartal, who operated an Italian restaurant on the premises. In or
14 around 2002, a peculiar odor emanating from the restaurant began
15 driving away Kartal's customers. In 2006, after Kartal discovered
16 that the odor was caused by underground storage tanks that were
17 leaking dry cleaning solvent, Kartal brought a nuisance action
18 against the Changs. Great American now seeks a declaratory
19 judgment that it does not have a duty to defend or indemnify the
20 Changs with respect to Kartal's nuisance action, as well as a
21 number of related suits, because the property damage alleged by
22 Kartal did not occur during the 1977 to 1983 policy period.

23 The Court ultimately granted Great American's motion for
24 partial summary judgment. In reaching its decision, the Court
25 relied on California case law distinguishing between causative
26 events and resulting property damage. SJ Order at 14-15. "It is
27 the latter injury or damage that must 'occur' during the policy
28 period, and 'which results' from the accident or 'continuous and

1 repeated exposure to conditions.'" Id. (quoting Montrose Chem.
2 Corp. v. Admiral Ins. Co., 10 Cal. 4th 645, 669 (Cal. 1995)). The
3 Court held that Kartal's complaint did not trigger coverage because
4 it alleged causative events -- not resulting property damage --
5 that occurred during the Changs' policy period. Id. at 15-16.
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7 **III. DISCUSSION**

8 The Changs now move the Court to reconsider the Summary
9 Judgment Order. Their motion fails on both procedural and
10 substantive grounds. As a procedural matter, the Changs' motion
11 violates Civil Local Rule 7-9. Subsection (a) of the rule
12 prohibits a party from moving for reconsideration without first
13 obtaining leave of the Court. That is precisely what the Changs
14 have done here.

15 The Changs have also violated Civil Local Rule 7-9(b), which
16 provides that a party moving for reconsideration must specifically
17 show:

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19 (1) That at the time of the motion for leave, a
20 material difference in fact or law exists from
21 that which was presented to the Court before
22 entry of the interlocutory order for which
23 reconsideration is sought. The party also must
show that in the exercise of reasonable diligence
the party applying for reconsideration did not
know such fact or law at the time of the
interlocutory order; or

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25 (2) The emergence of new material facts or a change
of law occurring after the time of such order; or

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27 (3) A manifest failure by the Court to consider
material facts or dispositive legal arguments
which were presented to the Court before such
interlocutory order.

1 The Changs have not shown a material difference in law or fact --
2 they rely on many of the same cases and facts that they discussed
3 in their opposition to Great American's motion for summary
4 judgment. Nor have they pointed to a manifest failure by the Court
5 to consider dispositive arguments. Rather, they merely disagree
6 with the Court's ultimate conclusions.

7 Even if reconsideration of the Court's conclusions was
8 procedurally proper, as a substantive matter, the Changs have yet
9 to present any persuasive arguments in favor of finding that Great
10 American has a duty to defend or indemnify. The Changs' motion for
11 reconsideration, like their opposition to Great American's motion
12 for summary judgment, ignores the distinction between causative
13 events and resulting property damage. Their arguments largely boil
14 down to the following: Kartal's alleged property damage must have
15 occurred during the 1977 to 1983 policy period because Kartal
16 alleges that the pollution discharge on the property began "at
17 least as far back as 1969" and continued through 2005. However, as
18 the Court held in the Summary Judgment Order, the pollution
19 discharge is only a causative event, which is irrelevant for the
20 purpose of determining coverage.¹

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22 ¹ The only new argument advanced by the Motion is that Kartal's
23 action could trigger coverage if Kartal amended his complaint to
24 allege new facts identified through discovery. Mot. at 4-7.
25 However, the Changs have not identified any new facts that Kartal
26 could possibly allege, other than additional facts concerning when
27 the solvent leak started. As discussed above, these facts are
28 irrelevant for the purpose of determining coverage. Moreover, the
cases cited by the Changs do not support their contention that the
Court should consider hypothetical amendments. Rather they stand
for the proposition that, in assessing the potential for coverage,
courts should consider the facts alleged rather than the causes of
action asserted. See Hudson Ins. Co. v. Colony Ins. Co., 624 F.3d
1264, 1267 (9th Cir. 2010); Dobrin v. Allstate Ins. Co., 897 F.
Supp. 442, 444 (C.D. Cal. 1995).

1 The Changs also haphazardly cite to a number of cases that
2 they contend require "further consideration." See Mot. at 7-10.
3 The Court already considered and distinguished many of these cases
4 in its Summary Judgment Order and declines to revisit them again.
5 The other cases cited by the Changs, including Standard Fire Ins.
6 Co. v. Spectrum Cmtys. Ass'n, 141 Cal. App. 4th 1117 (Cal. Ct. App.
7 2006), and State v. Allstate Ins. Co., 45 Cal. 4th 1008 (Cal.
8 2009), do not support reversal of the Summary Judgment Order. For
9 example, the Court in Standard Fire recognized the distinction
10 between causative events and resulting property damage, and found
11 for the insured because the alleged property damage occurred during
12 the policy period. 141 Cal. App. 4th at 1126-27.

13 Since the motion for reconsideration repeats many of the
14 arguments set forth in the Changs' opposition to Great American's
15 motion for summary judgment, the Changs have also violated Civil
16 Local Rule 7-9(c), which provides: "No motion for leave to file a
17 motion for reconsideration may repeat any oral or written argument
18 made by the applying party in support of or in opposition to the
19 interlocutory order which the party now seeks to have
20 reconsidered." Great American argues that the Changs' violation of
21 Rule 7-9(c) warrants sanctions. The Court agrees, especially since
22 the rule provides that "[a]ny party who violates this restriction
23 shall be subject to appropriate sanctions." Civ. L.R. 7-9(c).

24 Even if Rule 7-9(c) did not expressly require sanctions, this
25 is not the only time that the Changs have blatantly disregarded the
26 Local Rules. As noted above, the Changs also violated Civil Local
27 Rule 7-9(a) and 7-9(b) in connection with this motion.
28 Additionally, they violated Civil Local Rule 7-3(a) when they filed

1 a surreply brief in connection with Great American's motion for
2 summary judgment without first seeking leave of the Court. SJ
3 Order at 3 n.1. Judge Beeler, who was previously assigned to this
4 case, also noted that the Changs failed to comply with several
5 local rules when they filed a motion to dismiss on May 16, 2012.
6 ECF No. 14.

7 While the Changs' violations are numerous, they are not
8 altogether serious. Accordingly, the Court limits the sanction
9 award to \$500.

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11 **IV. CONCLUSION**

12 For the foregoing reasons, the Changs' motion for
13 reconsideration is DENIED. The Court awards Great American
14 sanctions in the amount of \$500. The Changs' counsel alone is
15 responsible for paying these sanctions.

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IT IS SO ORDERED.

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Dated: July 31, 2013



UNITED STATES DISTRICT JUDGE

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